them; and that the evidence did not show that they were guilty of gross negligence. The court determined that the bailment was for the mutual benefit of Chastek and defendants, and hence ordinary care was required to be exercised by the latter in protecting Chastek's property. We agree that this conclusion was the correct one to be drawn. The defendants received the automobile of Chastek in the course of the negotiation for a machine which they desired to sell to Chastek, and that they would be benefited by the transaction was only contingent upon an amount being agreed upon as a credit to be allowed Chastek which would be satisfactory to both sides.

"We think that the court was justified in concluding that ordinary care was not used for the protection of Chastek's automobile while it was in possession of the defendants. The machine was equipped with a lock, as to the operation of which Hoover, one of the defendants and the man who took charge of the machine, appeared to be familiar. Chastek delivered the key of the lock to Hoover, and when he turned the machine over in front of the place of business of the defendants the lock was fastened. Hoover took the automobile into the business section of a large city, left it unattended and unlocked, and it was stolen. With very simple means at hand by which the machine could have been made more secure in the place where he left it, Hoover omitted altogether to make use of this means. It would seem to be clear beyond question that such act of his by no means satisfied the requirement of ordinary care."

Contributory Negligence—Child Jumping on Moving Car. — In Kollentz *v.* Chicago & N. W. Ry. Co., 175 N. W. 929, the Supreme Court of Wisconsin held that where a boy 13 years old, of ordinary intelligence, jumped on a moving car and was struck by a signal near the track and injured, he was contributory negligent as a matter of law. The court said in part: "Appellant contends that the railroad company failed in the performance of its duty in its long acquiescence in the custom obtaining on the part of both boys and men of frequenting the right of way and jumping on moving freight trains and cars, without any protest against such custom on the part of the company, and without any effort on its part to stop or break up such custom and practice. We shall not consider the question of the negligence of the company, for the reason that whether or not the company was guilty of negligence, plaintiff must be held guilty of contributory negligence as a matter of law.

"We are thoroughly familiar with the principle that children of tender age are not held to that degree of care ordinarily exercised by adults, and that frequently conduct which would convict an adult of negligence as a matter of law raises but a jury question as to a child of tender years. However, this court has held children much younger than plaintiff in this case

guilty of contributory negligence on conduct much less rash than his. It may be that this court has been too rigorous in the standard of care required of childhood and youth. But if any respect is to be accorded such precedents as Ryan *v.* Lacrosse City R. Co. (108 Wis., 132, 83 N. W., 870), Wills *v.* Ashland L. P. & S. Ry. Co. (108 Wis., 255, 84 N. W., 998) and Ballard *v.* Bellevue Apartment Co. (162 Wis., 105, 155 N. W., 914), the plaintiff in this case must be held guilty of contributory negligence as a matter of law.

"In the Ryan case a boy a little less than 9 years of age, while walking in the street, was struck by a street car, unobserved by him, due entirely to his inattention. He was held guilty of contributory negligence as a matter of law. In the Wills case a country by, who lacked two months of being 14 years of age, who was but infrequently in the city, who was walking in a peculiarly confused place in the road, just emerging from the shadows of a double and complicated railroad bridge onto the street, where there was no sidewalk, and where the ordinary paved way was much used by foot passengers, and while his attention was unquestionably attracted by the novel and interesting sight of an ore train making its way over the trestle out to the ore docks, unconsciously gravitated so near to the street car track that he was struck by a passing car, was held guilty of contributory negligence as a matter of law. In the Ballard case the plaintiff, a girl 11 years of age, was injured while riding in and operating an automatic elevator in an apartment building. Because she knew and appreciated that children of her age had been prohibited by the proprietor of the building from operating the elevator, and knew that it was dangerous for her to do so, she was held guilty of contributory negligence as a matter of law.

"In the Ryan and Wills cases the negligence of the children consisted simply in a lack of attention to where they were going, and was of a negative and inactive character. The conduct which held them guilty of contributory negligence did not savor of deliberate rashness, as is the case here. The practice of jumping on moving trains is universally recognized as a hazardous and rash proceeding. Its danger to life and limb is open and notorious, and was thoroughly understood by the plaintiff. He not only had arrived at the age of understanding, but had a familiarity with railroad trains, and understood as well as an adult the dangers he assumed to his personal safety in attempting to jump upon and ride upon a moving freight car. To hold that he was not guilty of contributory negligence as a matter of law would be not only to entirely disregard and overrule the cases above cited, but to go much further, because the plaintiff here, in view of his age, his thorough understanding of the danger to which he subjected himself by his deliberate act, could well be held guilty of contributory negligence even though the cases above cited had been decided otherwise."